

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR
HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MC MS00118

CASE NAME: IN THE MATTER OF GIEDRIUS MITKUS
HEARING:
OSC re: FILING OF RECEIPTS & FINAL DISCHARGE

COUNSEL:

MINDAUGAS E. GEDGAUDAS (PET)...ERIC M. EPSTEIN
GIEDRIUS MITKUS (CPE)...

GENERAL INFORMATION:

This case is set for hearing on Supplemental Account/OSC re: Discharge

The final account was already approved and all that the Court needed was receipts and the Final Discharge order. However, following the final distribution order, a piece of real property was sold.

Continued from 8-23-04

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Amended Report filed on 8-19-04. This Conservatorship was established of a missing person, who was later found dead. The final report was heard on 2-27-03 but then on 7-16-03, the conservator filed an ex parte application for order modifying discharge and final distribution.
2. Petitioner now claims that expenses paid on the estate were actually advances made by petitioner as conservator and should be reimbursed \$9209.72. Many of these items were approved in the first accounting as reimbursements. Now asking to be paid for funeral expenses, donation to church and cost of shipping ashes to Lithuania.
3. Conservator and attorney waiving fees.
4. Need to file proof of service on Amended & Supplemental Account.
5. Filed a declaration pursuant to PC 13100 for the property from the Conservatorship to pass by intestate succession. OK
6. Need to comply with PC 8113 and give notice to foreign consulate (Canada & Lithuania).

RECOMMENDATION:

Need notice to heirs and foreign consulates

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MG MS00384

CASE NAME: G'SHIP OF BRYCE D KLIEVER & SAVANNA PHELPS

HEARING:

Petition for Appointment of Guardian

COUNSEL:

TRACY SELBY	(PET)...PRO/PER
BRYCE D KLIEVER	(MIN)...
SAVANNA PHELPS	(MIN)...

GENERAL INFORMATION:

This case is set for hearing on Petition for Guardianship, person only, by maternal aunt, minors 4 & 2

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Court to note that mail addressed to the petitioner at her stated residence was RETURNED. It appears that the petitioner lives in an area with no residence delivery for mail and that mail must be sent to Post Office Box. Court should verify with petitioner under oath as to her current residence address and her post office box.
2. Mother is addicted to methamphetamine and is not in a program.
3. Father of oldest minor has not participated in minor's life. Father of younger minor (Savanna) may be currently involved in a Family Law court case. Court needs to inquire as to status of Savanna Phelps and whether there has been a ruling in the family law case. The petition includes a copy of a Stipulation to Terminate Parental Rights of Father, which has been signed by father. Court needs to determine if this order was entered in MFL 07461.
4. There have been allegations of abuse to oldest minor by the wife of Savanna Phelps' father (stepfather's wife). CPS report not conclusive and their file was closed when the guardianship petition was filed.
5. Mother signed waiver and consent.
6. Need to file proof of personal service on father of Bryce.

7. Need to file proof of personal service on father of Savanna. It appears that he is not in California (either in a different state or in Iraq.). Certified mail, return receipt requested sufficient.
8. Need to complete section of Petition relating to the grandparents of the minors. Need information as to both minors (paternal and maternal grandparents).
9. Need to file proof of mailed service on CI and the grandparents.
10. Riverside Court Investigators have prepared a report positive for this guardianship.

RECOMMENDATION:

Need to complete petition and notice. Did not file proposed order, just proposed letters.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR
HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MG MS00387

CASE NAME: GUARDIANSHIP OF JESSE M. THEIS

HEARING:

Petition for Appointment of Guardian

COUNSEL:

GLORIA R FRANKS	(PET)...PRO/PER
JESSE M THEIS	(MIN)...
CAROL L CARTER	(MIN)...
DANIEL R CARTER	(MIN)...
GINGER CARLONE	(MIN)...

GENERAL INFORMATION:

This case is set for hearing on Petition for Guardianship, person only, by maternal grandmother, minors 16 (Jesse), 14 (Carol), 12(Daniel) & 10 (Ginger)

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Temporary letters issued 11-8-04.
2. Court to review Confidential Screening Form and Cletts report. If the Court has a concern regarding the petitioner, Court may wish to request that the Court Investigator complete a home study on the petitioner.
3. Mother is deceased.
4. Father of Jesse is Ralph Theis. He is reported to be unlocateable.
5. Father of Carol & Daniel is Andrew Carter. He is reported to be incarcerated.
6. Father of Ginger is reported to be unknown. File birth certificate.
7. Need information regarding paternal grandparents of each minor. Need information regarding maternal grandfather. Are there other siblings?
8. Need to file proof of personal service on all fathers or due diligence or birth certificate showing unknown.
9. Need to file proof of personal service on Jesse, Carol & Daniel.

RECOMMENDATION:

Need notice, possibly CI report at court's discretion

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS001205

CASE NAME: ESTATE OF LEE R. PARISH

HEARING:

Hearing re: WAIVER OF ACCOUNTING REPORT OF ADMINISTRATOR

COUNSEL:

PHYLLIS L MAHER	(PET)...	IRA N TUCK
LEE R PARISH	(DEC)...	

GENERAL INFORMATION:

This case is set for hearing on Waiver of Final Accounting

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need to file notice of hearing and proof of service. Although each beneficiary has waived an accounting, they did not waive notice.
2. Petitioner requests statutory commission of \$6612.75. OK
3. Attorney requests statutory fees of \$6612.75. OK

RECOMMENDATION:

RFA subject to 1. Once approved, set hearing for filing of receipts and final discharge for 11-21-05.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS00843

CASE NAME: In the Matter of the McLEOD Family Trust

HEARING:

Hearing re: Final Accounting

COUNSEL:

VICTORIA LYNNE FULLER (PET)...PRO/PER
RODERICK O'NEAL MCLEOD (D/T)...
RODERICK O'NEAL MCLEOD (HARTNELL HORSPOOL & FOX
)...HARTNELL
CHRISTINE ANNE HILLIARD (PRO/PER)...PRO/PER
AMERICAN CONSTRUCTOR'S INDEMNITY(GARY WAYNE BURGER)...GARY
WAYNE
D JOYCE ENGEL (MICHAEL S KHAN)...MICHAEL S

No file available for review

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS00902

CASE NAME: ESTATE OF LARRY K. LAYMON

HEARING:

Hearing re: REVIEW

COUNSEL:

LINDA G. WAUGH

(PET)...PRO/PER

LARRY K. LAYMON

(DEC)...

GENERAL INFORMATION:

This case is set for hearing on Review

Continued from 3-8-04, 6-14-04, 7-26-04 and 9-13-04

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need status report. Last was in January 2003 and it mentioned litigation still pending. What is status? What is case number/venue?
2. If the litigation is over and no monetary gain, can this estate be closed following the filing of a "no assets" declaration?

RECOMMENDATION:

None

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01013

CASE NAME: ESTATE OF FLORENCE P RILEY

HEARING:

Hearing re: PETN FOR APPROVAL OF COMPROMISE & SETTLEMNT AGRMNT

COUNSEL:

ERNIE PRYOR

FLORENCE P RILEY

(PET)...MARC B HANKIN

(DEC)...

GENERAL INFORMATION:

This case is set for hearing on Petition for Approval of Compromise & Settlement Pending are probate proceedings, trust proceeding, and complaint for damages against the Francis parties (allegations of elder abuse)

Trust and estate are settling with the Francis parties. It appears that the Francis parties are receiving what they would have been given under the trust plus more in exchange for waiving claims against the estate and fiduciaries. Court might wish to request additional information as to settlement and the advantages to estate (not to fiduciaries).

All of the parties have signed the agreement.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. No "service list" attached to the Notice of Hearing. Need to make sure that all beneficiaries of the trust and estate receive appropriate notice.\

RECOMMENDATION:

Court may wish to inquire further about settlement.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01084

CASE NAME: ESTATE OF JUDY LEE TAYLOR

HEARING:

Hearing re: FILING OF STATUS REPORT AND/OR ACCOUNTING

COUNSEL:

ANDREA TAYLOR	(PET)...	CHALRES R. CURREY, ESQ.
JUDY LEE TAYLOR	(DEC)...	

GENERAL INFORMATION:

This case is set for hearing on Petition for Final Distribution

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need to file notice of hearing and proof of service.
2. Petition does not include the two creditor's claim filed by Branch Banking & Trust Co. File verified supplement.
3. Decedent Judy Lee Taylor died a few hours before her husband, Col. Taylor. This probate relates only to the estate of Judy Taylor, but the beneficiaries from both estates have reached an agreement regarding shared inheritance. The two Judy Taylor beneficiaries claimed a bank account for approximately \$2000 prior to the filing of the probate estate. These monies are being subtracted from their share of the total estate. OK
4. Personal representative seeking \$4886 in statutory commission. OK
5. Attorney seeking \$4886 in statutory fees. OK
6. Did not submit proposed order.

RECOMMENDATION:

RFA subject to 1-2. Once approved, set hearing for filing of receipts and final discharge for 11-21-05.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01085

CASE NAME: ESTATE OF JOHN MICHAEL TAYLOR

HEARING:
Accounting Review

COUNSEL:

ANDREA TAYLOR (PET)...CHALRES R. CURREY, ESQ.
JOHN MICHAEL TAYLOR (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Petition for Final Distribution
(This is the estate of the spouse of Judy Taylor, prior matter)

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. See prior notes re: splitting of estate.
2. Personal representative seeking statutory commission of \$12,295. OK
3. Attorney seeking statutory fee of \$12,295. OK
4. Need to file notice of hearing and proof of service.
5. No proposed order filed.
6. Petition states no creditor's claims filed. Two were filed by Branch Bank.
File verified supplement.

RECOMMENDATION:

RFA subject to 4 & 6. Once approved, set hearing for filing of receipts and final discharge for 11-21-05.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01113

CASE NAME: ESTATE OF RONALD JAMES HOPKINS

HEARING:
Accounting Review

COUNSEL:

CONNIE L EAGLETON (PET)...IGNAZIO FICARA
RONALD JAMES HOPKINS (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Accounting Review

Continued from 7-26-04. NO appearance.

Continued from 9-13-04. Attorney Ficara requested continuance.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Still not filed.

RECOMMENDATION:

Suggest suspend powers of administrator for failure to file accounting as required.

Attorney Ficara should be ordered to file proof of service of suspension order on bonding company and the other heirs. Issue citation and have it personally served. Set OSC re: Failure to Account, Sanctions & Removal.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01118

CASE NAME: ESTATE OF JEAN M. McGEE

HEARING:
Accounting Review

COUNSEL:
JAMES HUTCHINSON (PET)...HEALY & HEALY
JEAN M MCGEE (DEC)...

GENERAL INFORMATION:
This case is set for hearing on Accounting Review

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Not filed.

RECOMMENDATION:
Find out status.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01164

CASE NAME: ESTATE OF HAROLD M. HEACOX

HEARING:

Hearing re: WAIVER OF ACCNTING, PETN FOR FEES & FINAL DISTRIBU

COUNSEL:

BEVERLY SUE PENHALLOW (PET)...DANIEL D KOPMAN
HAROLD M HEACOX (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Waiver of Accounting

Continued from 10-18-04 for submission of Graduated Filing Fee report. Filed.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Both beneficiaries signed waiver.
2. Petitioner waives statutory compensation.
3. Attorney requesting statutory fee of \$2280. OK
4. Attorney requesting extraordinary fee of \$625 for assistance with dealing with real property. (2.5 hours at \$250 per hour) JTD

RECOMMENDATION:

RFA. Once approved, set hearing for filing of receipts and final discharge for 11-21-05.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01173

CASE NAME: ESTATE OF WALTER J. DeROCHE

HEARING:

OSC re: Inventory & Appraisal

COUNSEL:

ROY MCGE (PET)...MARSHA CINIELLO
WALTER J. DEROCHE (DEC)...

GENERAL INFORMATION:

This case is set for hearing on OSC re: I & A

Continued from 9-20-04

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Still not filed.

RECOMMENDATION:

Find out status.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01182

CASE NAME: MATTER OF THE GOMIEO FAMILY TRUST

HEARING:

OSC re: Preliminary Injunction

COUNSEL:

BRIAN GOMIEO	(PET)...DONALD C KEMBY
TIMOTHY GOMIEO	(PET)...DONALD C KEMBY
KEITH GOMIEO	(PET)...DONALD C KEMBY
DOREEN WOOLSEY	(PET)...DONALD C KEMBY
DARREL GOMIEO	(PET)...DONALD C KEMBY

GENERAL INFORMATION:

This case is set for hearing on OSC re: Preliminary Injunction

Continued from 1-26-04, 3-15-04, 6-28-04 and 10-18-04 at request of counsel. Some type of stipulation was supposedly reached.

Ex parte TROP request granted on 12-29-03, but never issued due to failure to post \$100,000 bond. Brothers/beneficiary of irrevocable trust, claim that brother/trustee has breached his duties as trustee. Seeking "status quo order"

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. No stipulation filed.
2. No evidence provided in petition.
3. Did not file complete proof of service.
4. See notes from 6-28-04 regarding other issues with petition.

RECOMMENDATION:

Deny petition for failure to prosecute (serve, provide evidentiary support)

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01185

CASE NAME: MATTER OF ORA E. POPE

HEARING:

Motion for Summary Judgment

COUNSEL:

JACK S HERTWICK (PET)...IRA N TUCK
JACQUELINE K HACKNEY (PET)...IRA N TUCK
ORA E POPE (DEC)...
SARA B TAYLOR (OBJ)...HEALY & HEALY

GENERAL INFORMATION:

This case is set for hearing on Motion for Summary Judgment filed by Jack S. Hertwick & Jacqueline K. Hackney, respondents in Will Contest filed by Sara B. Taylor (sister of decedent)

See Confidential Memo

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

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DATE: 11/22/04 TIME: 8:30 DEPT: MPR

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DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01254

CASE NAME: MATTER OF THE VIRGINIA J. BEISER REVOCABLE TRUST

HEARING:

Hearing re: PET'N FOR REMOVAL OF CURRENT TRUSTEE & APPOINT NEW

COUNSEL:

KANSAS STATE UNIVERSITY FOUNDA(PET)...TAYLOR L. CLARK

K.S.U. COLLEGE OF VETERINARY M(PET)...TAYLOR L. CLARK

IRA (DEF)...

IRA N. TUCK TRUSTEE ()...

GENERAL INFORMATION:

This case is set for hearing on Petition for Determination that Proposed Petition to Compel Compliance with Terms of Trust and for Removal of Trust Would not be a Contest within the Terms of the No-Contest Clause

Continued from 9-27-04 for review of Reply to Response filed by Kansas State University
on 9-23-04

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. PC 21320 states that a determination whether a proposed petition violates a no contest clause may not be made if a determination of the merits of the petition is required.
2. The proposed petition states that the petitioner is a beneficiary under the trust. Response filed by Trustee, Ira Tuck, contesting whether petitioner is a beneficiary. Trust states that residuary assets to go to establish a scholarship fund at College of Veterinary Medicine at Kansas State College. File supplemental Ps & As regarding how petitioner has standing to file the 17200 Petition for Instructions; how petitioner is a beneficiary. **Reply filed re: standing. States that the University is a named beneficiary as follows: "The rest and residue of the trust estate shall be used to establish a scholarship fund in the memory of Dr. Charles A. Jerome,**

2. The proposed petition states that the petitioner is a beneficiary under the trust. Response filed by Trustee, Ira Tuck, contesting whether petitioner is a beneficiary. Trust states that residuary assets to go to establish a scholarship fund at College of Veterinary Medicine at Kansas State College. File supplemental Ps & As regarding how petitioner has standing to file the 17200 Petition for Instructions; how petitioner is a beneficiary. **Reply filed re: standing. States that the University is a named beneficiary as follows: "The rest and residue of the trust estate shall be used to establish a scholarship fund in the memory of Dr. Charles A. Jerome,**

Sr., in loving memory of his daughter, Virginia Jerome Beiser, at the College of Veterinary Medicine of Kansas State University...” The question at issue is whether this language is sufficient to determine that KSU is a beneficiary or if the setting up of a scholarship there can be done independently. Reply states no California case law on point and cites to a case from Pennsylvania where a diocese which was the beneficiary of scholarships was given standing. Does the Trust wish to file counter-Points & Authorities on Standing?

3. Petition contests role of Mr. Tuck as he drafted the will and trust, and so he should be removed. The no-contest clause in the Trust states that without a substantial basis, unsuccessful litigation aimed at the removal of a successor trustee shall be treated as though an attack on the validity of the trust. **Reply argues that this petition does not contest the trust itself, as it relates to the appointment or removal of a fiduciary. Does the Trust wish to file counter-Points & Authorities on this issue?**
4. Beneficiaries are free to bring up questions of violation of public policy. Estate of Ferber (1998) 66 Cal.App.4th 244. Is this the basis of the removal?
5. PC 21307 states that a no contest clause is not enforceable against a beneficiary to the extent that the beneficiary, with probable cause, contests a provision that benefits a person who drafted the instrument. Is this 17200 petition making an allegation under PC 21307?
6. Response filed by Kansas State University College of Veterinary Medicine and Kansas State University Foundation

RECOMMENDATION:

If there is no further Response, set the matter for contested hearing.

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01274

CASE NAME: ESTATE OF PATRICIA J LARSEN

HEARING:

Petition for Probate, Letters of Tstmntry with full authority
under IAEA.

COUNSEL:

DAN LARSEN JR	(PET)...PRO/PER
PATRICIA J LARSEN	(DEC)...

GENERAL INFORMATION:

This case is set for hearing on Petition for Probate of Will

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need to file proof of due publication.
2. The estate has a stated value of between \$500,000 and \$750,000. Under the new rules (per the Government Code), the correct fee for filing the Petition would be \$281.50 plus an enhancement of \$181.50.
3. Will waives bond.
4. Petitioner needs to file that portion of the Dan E and Patricia J. Laresen Trust which names him as the successor trustor.

RECOMMENDATION:

RFA subject to 1, 4, and payment of \$181.50.

Court should note that petitioner has filed a "Petition for Waiver of Appraisal by Probate Referee", calendared for 12-6-04. (The Petition for Waiver cannot be heard any earlier, per PC 8903).

CIVCAL4

PROBATE/GUARDIANSHIP/CONSERVATORSHIP CALENDAR

HONORABLE JUDGE JAMES C MCGUIRE

DATE: 11/22/04 TIME: 8:30 DEPT: MPR

CASE #: MPRMS01275

CASE NAME: MATTER OF JORGES FRANQUEBALME

HEARING:

Petition to determine succession to Real Property

COUNSEL:

COLETTE KOHAGEN (PET)...CALDWELL, KENNEDY & PORTER, A.
JORGES FRANQUEBALME (DEC)...

GENERAL INFORMATION:

This case is set for hearing on Petition to Determine Succession

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

None

RECOMMENDATION:

RFA